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The Regulation of Commercial Gaming

Cory Aronovitz, Esq.*

I. INTRODUCTION

The gaming industry is subject to special scrutiny, beyond that given to other industries.¹ Many people fear that gaming will produce substantial negative impacts on society, either because gaming has a colorful past filled with unsavory individuals, or because it has the potential to wreak social havoc, absent direct and continuous oversight.² Therefore, all jurisdictions that allow gaming have adopted some form of regulation—a structure to govern all conduct within the gaming environment.³ Although certain specific policies and goals may differ among communities, all gaming regulation strives to maintain the integrity of the gaming environment and to assure the public that the games are fair.

To achieve integrity and fairness, legislation and administrative implementation must act as one. The will of the people of each jurisdiction comprises that jurisdiction's public policy. The

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¹ NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT, at 3-1 (1999), available at <http://govinfo.library.unt.edu/ngisc/index.html> [hereinafter NGISC FINAL REPORT]; Bruce P. Keller, *The Game's the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 YALE L.J. 1569, 1569 (1999).

² NGISC FINAL REPORT, *supra* note 1, at 3-1; Janne Giroir Siegel, 24 *Pro: What "They" Don't Want You to Know About Casino Gambling*, 30 ARK. LAW. 24 (1996) (noting negative impacts, including: regressive taxation, social costs, reshuffled spending in local economy, and increased organized and street crime); see also Earl L. Grinols & David B. Mustard, *Measuring Industry Externalities: The Curious Case of Casinos and Crime* (March 2001) (unpublished manuscript, on file with Chapman Law Review) (discussing the negative impacts associated with gaming: crime, business and employment costs, bankruptcy, suicide, social service costs, direct government regulatory costs, family costs, and abused dollars).

³ Paul D. Delva, Comment, *The Promises and Perils of Legalized Gambling for Local Governments: Who Decides How to Stack the Deck?*, 68 TEMP. L. REV. 847, 849 n.13 (1995) ("Regulation can be defined as 'the expression of government, in the nature of a rule of conduct, imposed upon rather than implicit in a situation, conventional in character, and generally operating with form requirements, precise quantities, or administrative arrangements.'" (quoting FREUND, LEGISLATIVE REGULATIONS 3 (1932), reprinted in 3 C. DALLAS SANDS ET AL., LOCAL GOVERNMENT LAW § 14.01, at 14-2 (1994))).

public needs its lawmakers to codify these policies in the form of legislation. In turn, administrative implementation is necessary to execute these legislative directives. Therefore, successful gaming regulation inherently relies upon clear public policy, well-defined legislative goals, and a method of administrative delegation.⁴

This article focuses on how to successfully regulate commercial gaming, using Midwest gaming, primarily the Illinois regulatory system, as a backdrop. Part II addresses the reasons for authorizing gaming and the purposes of gaming regulation. Part III identifies the forms of successful gaming legislation, and the essential elements needed to draft such legislation. Part IV discusses legislation implementation through delegation. Finally, Part V explores the proper role of gaming regulators, including promulgating rules, setting policy, and enforcing legislation.

II. THE REASONS FOR AUTHORIZING GAMING AND THE PURPOSE OF GAMING REGULATION

The reasons for authorizing gaming are conceptually distinct from the purpose of gaming regulation. Reasons for authorizing gaming are often reactionary; conversely, the purpose of regulating gaming is normally to effectuate established legislative policy directives.⁵ Legislatures authorize gaming for two principal reasons: to derive economic benefits from the gaming industry and to react to market competition. Each reason is based on different policy considerations and goals, and requires a different method of implementation. As a result, the reason for which a legislature authorizes gaming determines its legislative directives. Ultimately, this means that the purpose and method of regulating gaming depends upon the underlying reason for authorization.

A. Economic Benefits Derived from Gaming

Economic benefits derived from gaming typically include economic revitalization, employment opportunities, tax revenue, and increased tourism.⁶ Thus, a legislature considering authorizing gaming must first determine the specific type of economic benefit its community desires, based on its needs. This decision requires lawmakers to consider "moral, political, health, safety, social, and economic reasons" that are important to their constituents.⁷ Once

⁴ ANTHONY N. CABOT, CASINO GAMING: POLICY, ECONOMICS AND REGULATION 11 (1996).

⁵ *Id.* at 12-13.

⁶ *Id.* at 59-65; see also Siegel, *supra* note 2, at 24; Lawrence J. Truitt, *The Regulation and Economic Impact of Riverboat Casino Gambling in Illinois*, in GAMBLING PUBLIC POLICIES AND THE SOCIAL SCIENCES 131 (William R. Eadington & Judy A. Cornelius eds., 1997).

⁷ CABOT, *supra* note 4, at 12.

identified, the specific economic benefits should be expressed as the legislature's public policy, and included in the legislation as the "legislative intent."

1. Economic Revitalization

Economic revitalization, one benefit of authorizing gaming, encompasses casino development, non-gaming capital investment that supports new gaming development, municipal infrastructure improvements, and small business opportunities.⁸ Lawmakers can control these aspects of economic revitalization through legislation. Such control may take the form of express provisions for the size, scope, location, and minimum investment of new gaming development, the allocation of tax revenue for municipal infrastructure improvements, the procurement of a percentage of goods and services from preferred vendors,⁹ and assistance to start-up businesses through grants or other credit support.

Authorized gaming in Illinois is one example of successful gaming-driven economic revitalization. In 2000, the eight casinos comprising the Illinois Casino Gaming Association spent over sixty-three million dollars on capital improvements to their facilities.¹⁰ Additionally, local gaming taxes collected from The Empress Joliet Casino and Harrah's Joliet Casino enabled the City of Joliet to invest \$7.3 million in neighborhood improvements, and \$2.5 million in the Joliet Historical Society renovation.¹¹

2. Employment Opportunities

Authorizing casinos also generates jobs in the community. In addition to the actual casino jobs created when casinos are authorized, casino jobs have a 1.7 multiplier. This means that every casino job creates 1.7 other, non-casino jobs.¹² The addition of a casino creates employment opportunities in numerous industry sectors: public service, construction, entertainment, laundry, waste removal, local transportation, banking, food and beverage distribution, and social services.

⁸ *Id.* at 62-63; see also AM. GAMING ASS'N, STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT, at 7-18 (2001), available at http://www.americangaming.org/survey2001/sur_index.html [hereinafter AGA SURVEY]; Randolph Baker, *Lessons from a Decade of Riverboat Gaming: A Personal Perspective*, GAMING L. REV., vol. 5 No. 5, at 451, 458 (2001).

⁹ These are typically comprised of local preference or minority business enterprises.

¹⁰ ILL. CASINO GAMING ASS'N, 2000 ANNUAL REPORT 2 [hereinafter ICGA 2000 REPORT]; see also AGA SURVEY, *supra* note 8, at 7-18 (providing an overview of the economic impact by casinos in various jurisdictions).

¹¹ See ICGA 2000 REPORT, *supra* note 10, at 2.

¹² CABOT, *supra* note 4, at 63. In 2000, approximately 370,207 casino employees were employed by commercial and Native American casinos. AGA SURVEY, *supra* note 8, at 5.

In June 1999, the National Gambling Impact Study Commission (NGISC) published a report of findings from its two-year investigation into the status of gaming in the United States.¹³ In the report, the NGISC cited a 1996 Arthur Andersen study regarding the influence of gaming on the American economy.¹⁴ Arthur Andersen discovered that in 1995, the entire casino industry directly employed almost three hundred thousand people, who collectively earned approximately \$7.3 billion in wages.¹⁵ The study also found that nationally, the average wage for casino employees was higher than the average wage of workers in most related fields.¹⁶ Furthermore, in that same year, casino jobs indirectly supported over four hundred thousand non-casino jobs, which in turn paid \$12.5 billion in wages.¹⁷

Although casinos are self-contained, handling their own labor-intensive, day-to-day operations, casinos typically obtain goods and services needed to support the facility from local vendors.¹⁸ Accordingly, casinos create many local employment opportunities. For example, in 2000, the eight members of the Illinois Casino Gaming Association spent over \$13 million for meat, \$2.7 million for vegetables, and \$1.7 million for laundry and dry cleaning services with local vendors.¹⁹

Another benefit of casino-created employment is that casinos draw employees from diverse backgrounds and experiences. Employment opportunities in casinos range from entry-level jobs, requiring little or no education, to senior executive positions for those with advanced graduate degrees. Regardless of their job titles, casino employees have tremendous opportunities to advance within the company. Because gaming is a niche industry, casinos tend to promote from within, through in-house training programs.²⁰ Casinos also benefit from such training programs because they create employee loyalty, motivate employees to

¹³ See NGISC FINAL REPORT, *supra* note 1, at 7-6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (noting that in 1995, the national average wage for casino employees was twenty-six thousand dollars).

¹⁷ *Id.* Indirect jobs are jobs outside of the casino that support the gaming operation and its employees; those that provide goods and services to the casino, and the local businesses that provide to the employees—restaurants, bars, cleaners, food marts, video stores, and so forth.

¹⁸ *Id.*

¹⁹ See ICGA 2000 REPORT, *supra* note 10, at 2.

²⁰ For example, Harrah's website displays the following employment advertisement: Harrah's Entertainment, Inc. offers a world-class salary and benefits package designed to reward extra effort and encourage professional development. We also provide one-to-one mentoring, ongoing skills training, and outstanding opportunities for advancement. . . . Stick with Harrah's, and you can go places. Just climb aboard the most progressive career building system in the industry. . . . With programs like . . . the company-wide internal job posting system, you'll have every opportunity to turn your job at Harrah's into something more.

advance, create skilled employees readily available for casino expansion into new jurisdictions, and minimize the need for recruiting.

Authorized casino gaming also creates educational and training opportunities for casino employees. Notwithstanding the proliferation of gaming in recent years, few educational programs exist that provide students with the skills necessary to work in a casino.²¹ To bridge the education gap, Illinois casinos provided over sixty-nine thousand hours of training to a diverse workforce in 2000.²² This workforce was made up of over fifty percent women and more than twenty-nine percent minorities.²³ The sheer volume of jobs created, abundant educational opportunities, and inclusion of minority employees in the workforce combine to make employment opportunities one of the principal benefits of authorized gaming.

3. Tax Revenue

Gaming is a lucrative business; however, the legislature can restrict participation in that business opportunity. Therefore, gaming companies accept the fact that jurisdictions will impose heavy taxes on the gaming industry, in exchange for the opportunity to conduct gaming. While tax rates vary among jurisdictions, gaming is usually taxed at a rate higher than the rates imposed upon most other industries.²⁴ Illinois imposes the highest gaming tax in the United States.²⁵ In 2000, this high tax rate yielded over \$512 million in gaming tax revenues.²⁶ In Nevada,

Harrah's, *Our Culture*, at http://www.harrahs.com/employment/our_culture.html (last visited Mar. 26, 2002).

²¹ The University of Nevada, Las Vegas offers educational programs designed to graduate students that are prepared to work in the gaming industry. See UNLV, University of Nevada Las Vegas, Graduate Catalog, Fall 2001 - Spring 2003, available at <http://www.unlv.edu/pubs/catalogs/graduate/research.html>.

²² ICGA 2000 REPORT, *supra* note 10, at 2.

²³ *Id.*

²⁴ AGA SURVEY, *supra* note 8, at 5. In 2000, tax revenue from gaming was the leading source of tax revenue in Nevada. *Id.* In fiscal years 1999 and 2000, tax revenue from gaming was within the top five sources in Indiana, Louisiana, Mississippi, and New Jersey, generally behind tax on individual income, sales, and gasoline and petroleum. *Id.*

²⁵ *Id.* at 7-18 (listing the gaming tax rates for a number of jurisdictions and showing Illinois as the highest); see also 230 ILL. COMP. STAT. 10/13(a) (2001). Specifically, Illinois imposes a sliding scale tax rate as follows:

15% of annual adjusted gross receipts up to and including \$25,000,000; 20% of annual adjusted gross receipts in excess of \$25,000,000 but not exceeding \$50,000,000; 25% of annual adjusted gross receipts in excess of \$50,000,000 but not exceeding \$75,000,000; 30% of annual adjusted gross receipts in excess of \$75,000,000 but not exceeding \$100,000,000; 35% of annual adjusted gross receipts in excess of \$100,000,000.

Id.

²⁶ ILL. GAMING BD., 2000 ANNUAL REPORT 9 (2001), available at <http://www.igb.state.il.us/annualreport/2000IGB9.pdf> [hereinafter ILL. 2000 REPORT]; see also AGA SURVEY, *supra* note 8, at 2 (discussing that in 2000, commercial casinos exclusive of Native

gaming tax revenues account for more than half of all public budgets.²⁷

Despite these figures, gaming opponents argue that gaming tax revenue is not a societal benefit, and that the social consequences of gaming exceed any value received from these revenues.²⁸ The gaming industry, together with communities that have received direct benefits from gaming, largely dispute these claims.²⁹ These gaming proponents cite the lack of empirical studies that support the anti-gaming position regarding social consequences.³⁰ In any event, each legislature considering authorizing gaming makes its decision by weighing any perceived social costs against the vast possible revenues.

4. Tourism

Many people have long believed that gaming attracts tourism.³¹ Because gaming is not available in all areas, it follows that many people who wish to gamble travel in order to do so. Tourism creates an economic benefit for a community when it creates an “extra demand[,]” as opposed to switching demand” from an existing industry to gaming.³² If gaming attracts existing tourists to participate in a new activity, then a shift in spending results. Any such shift ultimately has a negative impact on the community from which the tourism was drawn away.

When tourists have equally convenient access to several gaming locations, other factors will ultimately decide which location they visit. The availability of non-gaming amenities such as entertainment, dining options, and hotel accommodations may be a factor in tourist decisions. Tourists may also consider the manner in which a jurisdiction has regulated gaming when making a decision. Regulatory factors in tourist decisions may include loss limits,³³ cruising,³⁴ gaming sessions,³⁵ or the types of games offered.

American gaming facilities paid approximately \$3.5 billion in taxes); ICGA 2000 REPORT, *supra* note 10, at 2 (noting the distribution of revenues as \$410 million to the state and \$102 million to local governments).

²⁷ CABOT, *supra* note 4, at 61-62 n.122.

²⁸ See generally Grinols & Mustard, *supra* note 2.

²⁹ See generally AGA SURVEY, *supra* note 8, at 19; ICGA 2000 REPORT, *supra* note 10, at 2 (highlighting investments made in the local communities); .

³⁰ CABOT, *supra* note 4, at 61.

³¹ Tourism “introduces new cash into the community from nonresidents.” *Id.* at 60.

³² *Id.*

³³ A “loss limit” is the fixed dollar amount that a casino patron may put at risk for a given gaming session. *E.g.*, MO. REV. STAT. § 313.805(3) (2001) (limiting the loss at five hundred dollars per player, per excursion).

³⁴ *E.g.*, IND. ADMIN. CODE tit. 68, r. 8-1-1(3) (2001) (defining “full excursion,” which is another term for cruising).

³⁵ *Id.* r. 8-1-2(c)(1) (describing a gambling excursion schedule, which is another term for gaming session).

For example, certain gaming markets in Illinois were at one time at a disadvantage because they were subject to more restrictive gaming regulations than nearby Iowa casinos.³⁶ Illinois casinos were required to cruise on the water, and were therefore unable to compete with Iowa casinos not subject to the same requirement.³⁷ Patrons clearly favored the ability to come and go at their leisure from the casinos in Iowa, as opposed to the restricted schedules and gaming cruises required by the Illinois regulations.³⁸

Similarly, the possibility exists that casinos will be forced, through competition with other casinos, to offer non-gaming amenities already available within the community. These additions may cannibalize local businesses. In New Jersey, casinos forced out local businesses, resulting in the closing of many family-run restaurants and taverns, which had withstood decades of hard times.³⁹ Regardless of whether such non-gaming amenities were within the core business of the New Jersey casinos, the casinos were forced by competition to become “destination properties.”⁴⁰ If a customer were unable to find a product or service at one casino, he or she would go to a competitor. As a result, casinos felt compelled to offer non-gaming amenities that local businesses had previously offered to the public.⁴¹

³⁶ For example, Rock Island Boatworks, Inc., an Illinois riverboat licensee, located directly across from Iowa licensees, which were not required to cruise, operated at a competitive disadvantage, evidenced by an increase in revenues of approximately eighty percent after the 1999 amendments to the Illinois Riverboat Gambling Act authorized dockside gaming. ILL. 2000 REPORT, *supra* note 26, at 31.

³⁷ See ILL. GAMING BD., 1999 ANNUAL REPORT 31 (2000), available at <http://www.igb.state.il.us/annualreport/web99igb9.pdf> [hereinafter ILL. 1999 REPORT] (comparing adjusted gross receipts for Rock Island fiscal years 1998 and 1999, and showing an increase of 19.09%). The Illinois Riverboat Gambling Act was amended in 1999, allowing dockside gaming beginning in June 1999. 230 ILL. COMP. STAT. 10/3(c) (2001). It is the author's belief that the amendment had a direct impact on the increased revenues. See IOWA RACING & GAMING COMM'N 491-5.6(99F)(2)a (2001), available at <http://www3.state.ia.us/irgc/CH5.pdf> (detailing excursion gambling boat uniform requirements, “The excursion season shall be from April 1 through October 31 of each calendar year. An excursion gambling boat must operate at least one excursion each day for 100 days during the excursion season to operate during the off-season . . .”).

³⁸ See ILL. 2000 REPORT, *supra* note 26, at 31.

³⁹ See N.J. CASINO CONTROL COMM'N, CASINO GAMBLING IN NEW JERSEY: A REPORT TO THE NATIONAL GAMBLING IMPACT STUDY COMMISSION 27-28 (1998). See generally Marla K. Nelson, *Casino Gambling in Atlantic City: A Sure Bet for Whom?*, at <http://www.asu.edu/caed/proceedings99/NELSON/NELSON.htm> (last visited Mar. 25, 2002).

⁴⁰ A “destination property” is a property that offers the patron many amenities including gaming, various dining options, spas, night clubs, various entertainment options including shows or reviews or headline entertainers, one of a kind visual attractions (fountains, volcanoes, art, gondola rides), shopping, and a pool, beach, or marina. A destination property is a resort that provides the guest with so many options that there is no reason for that person to leave the property.

⁴¹ For example, in Atlantic City the Trump Taj Mahal has the Hard Rock Café, Trump Taj Mahal Casino Resort, Restaurants, at <http://www.trumptaj.com/restaurants/Default.htm> (last visited Apr. 18, 2002), Caesar's has shopping at The Shops on Ocean One, The Shops on Ocean One, at <http://www.oceanonemall.com/> (last visited Mar. 30, 2002), and

These results illustrate the importance of careful legislative planning and regulation. A legislature seeking to receive the economic benefits of tourism by authorizing gaming should, therefore, be clear about its goals, and set in place policies that address these concerns in the manner best for the community.

B. Reaction to Market Competition as a Reason for Authorizing Gaming

Competition with neighboring states is the other primary reason that many states authorize gaming. "If neighboring states have gambling, and people cross state boundaries to place their bets, the state without gambling may suffer the adverse consequences that are caused by gambling, without receiving the benefit of increased revenue."⁴² The reality of market competition with other states forces lawmakers to react, justifying the enabling legislation by pointing to gaming's economic benefits. Lawmakers reason that regardless of competition, authorizing gaming will result in economic benefits to a given state because the state will thereby at least receive its proportionate share of the gaming revenues.

For example, one must ask whether Illinois would have enacted its riverboat casino law in 1990, if Iowa had not authorized gaming the previous year.⁴³ Indiana and Missouri subsequently authorized gaming, arguably in response to Illinois's new gaming law.⁴⁴ In addition to the need to prevent discretionary income from crossing state borders, however, Illinois, Indiana, and Missouri each presumably envisioned that gaming would stimulate the stagnant economy common to most jurisdictions during that time period.⁴⁵

In Illinois, the legislature's stated purpose for enacting the Riverboat Gambling Act⁴⁶ was to "benefit the people of the State of Illinois by assisting economic development and promoting Illinois

Bally's has a spa, Park Place Entertainment, Bally's, Spa Services, at <http://www.ballysac.com/> (last visited Mar. 30, 2002).

⁴² Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 MISS. L.J. 291, 326 (1995); see also IN. GAMBLING IMPACT STUDY COMM'N, REPORT TO THE GOVERNOR, THE SOCIAL, FISCAL, AND ECONOMIC IMPACTS OF LEGALIZED GAMBLING IN INDIANA 15 (1999).

⁴³ See Truitt, *supra* note 6, at 130, 132 (indicating Illinois enacted gaming legislation in response to Iowa's gaming law); see also ILL. 2000 REPORT, *supra* note 26, at 9 (showing year 2000 adjusted gross receipts increased by more than twenty-one percent over 1999 after the 1999 amendment authorizing dockside gaming); James Platz, *Expanded Gaming Vote Nears in Indiana*, BLOOD-HORSE MAG., at <http://news.bloodhorse.com/viewstory.asp?id=8261> (last updated Feb. 26, 2002).

⁴⁴ Missouri authorized gambling in 1992, and Indiana in 1993. INTERNATIONAL CASINO LAW 33, 92 (Anthony N. Cabot et al. eds., 3rd ed. 1999) [hereinafter INT'L CASINO LAW], see also IND. CODE § 4-33-1-1 (1993); MO. REV. STAT. § 313.800-.850 (1993).

⁴⁵ 230 ILL. COMP. STAT. 10/2 (1993); IND. CODE § 4-33-1-2 (1993).

⁴⁶ 230 ILL. COMP. STAT. 10/1-10/23.

tourism.”⁴⁷ The Riverboat Gambling Act describes the economic benefits as “enhance[d] investment, development and tourism in Illinois”⁴⁸ but mandates that gaming be conducted in a manner that preserves the “public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process.”⁴⁹ Therefore, to protect the public trust and the integrity of the games, the Riverboat Gambling Act provides notice to the gaming industry that the “regulatory provisions of this Act are designed to strictly regulate the facilities, persons, associations and practices related to gambling operations pursuant to the police powers of the State, including comprehensive law enforcement supervision.”⁵⁰

III. ESSENTIAL ELEMENTS OF A GAMING LAW

As previously discussed, creating a law authorizing gaming involves a three-step process: (1) determining public policy, (2) defining goals, and (3) implementing legislation. Once the underlying public policy is identified and the legislative goals are defined, the legislature must adopt and implement laws reflecting these policies and goals to govern how gaming will be conducted. The third and final step, implementing the legislation, is critical to the success of the gaming venture. Implementation is very different from the first two steps of the lawmaking process because it requires lawmakers to make calculated decisions about concepts that they may not fully comprehend. When determining public policy and defining goals, lawmakers rely on their experience and familiarity with the values and needs of the community. Dedicated lawmakers are intimately involved with the needs and pressing issues of their community, and usually typify the values of their constituents. Implementation, however, goes beyond this inherent legislative expertise.

Although there are many components in a comprehensive gaming law, the key provisions must include licensing, operational controls, enforcement, tax, and accounting and audit.⁵¹ In addition, sensitive issues regarding compulsive and underage gambling, alcohol consumption, and the scope of the gaming facility are essential elements, which must be taken into consideration to create a well-crafted gaming law.

⁴⁷ *Id.* § 10/2(a).

⁴⁸ *Id.* § 10/2(b).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ CABOT, *supra* note 4, at 13-14.

A. Regulatory Models

While all gaming laws incorporate provisions designed to maintain the integrity of the games and to protect against the infiltration of organized crime, the public purpose behind these provisions differs. Two well-established, general public purposes relate to gaming, and two different regulatory models have been developed to further these distinct purposes.

The first regulatory model, commonly referred to as the "Nevada model," seeks to maximize the economic benefits of gaming, and allows the industry to meet market demands with little regulatory involvement, including determining the number, location, and size of gaming facilities.⁵² Although business decisions are vested with the industry, integrity and suitability issues are strictly regulated.

The other approach, commonly referred to as the "New Jersey model,"⁵³ is in stark contrast to the Nevada model. This model focuses on the potential negative impacts of gaming, and establishes a comprehensive regulatory framework that strictly governs virtually every aspect of the business.⁵⁴ Interestingly, while Nevada has experienced tremendous growth and capital investment over the last five years, New Jersey did not have any new development for ten years, following the opening of the Taj Mahal in 1990.⁵⁵

In both models, the administrative investigation and enforcement functions are independent and separate from the administrative decision-making. In Nevada, the Gaming Control Board investigates and enforces the gaming law and submits its findings and recommendations to the Gaming Commission for its determination.⁵⁶ In New Jersey, the Division of Gaming Enforcement investigates and enforces the gaming law, while the decision function is vested in the Casino Control Commission.⁵⁷

Illinois is an example of a hybrid model, midway between the Nevada and New Jersey models. This hybrid regulatory scheme is typical of the "emerging jurisdictions," including Iowa, Indiana, Missouri, and Louisiana.⁵⁸ The hybrid model vests all regulatory functions in one agency and limits the number of casino licenses

⁵² See NGISC FINAL REPORT, *supra* note 1, at 3-5.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ The Borgata, a joint venture between Boyd Gaming Co. and MGM-Mirage Inc., is the first new casino development in Atlantic City in the last ten years, and is scheduled to open Summer 2003. See Jonathan Kandell, *Betting on the Boardwalk*, CIGAR AFICIONADO, Dec. 2001, at 136, 136-44.

⁵⁶ See NEV. REV. STAT. 463.140 (2002).

⁵⁷ N.J. REV. STAT. § 5:12-77 (2001); *id.* § 5:12-63.

⁵⁸ "Emerging jurisdiction" is a term that the author uses to describe the proliferation of regulated commercial gaming in the 1990s.

that may be issued.⁵⁹ In addition, the same agency investigates, enforces, and decides all aspects of the gaming environment. Mississippi has created a second form of the hybrid model. Mississippi subscribed to the Nevada model in part, including no restrictions on the potential number of available licenses.⁶⁰ Unlike Nevada, however, Mississippi has a single regulatory body.⁶¹

B. Components of a Comprehensive Gaming Law

As previously mentioned, there are several components to a comprehensive gaming law. These include licensing, operational controls, law enforcement, taxation, and accounting and auditing. Each component merits individual discussion.

1. Licensing

Licensing is governmental control that determines who will profit from gaming activities, and who may associate with the gaming industry. The level of regulatory scrutiny varies, depending on a party's level of involvement in the gaming industry. Typically, the level of regulatory scrutiny increases when there is an increased level of involvement.

Five general groups are involved in gaming, and each is treated differently with respect to licensing.⁶² Group I includes owners and operators, those individuals who profit from gaming.⁶³ Officers, directors, and shareholders of a private gaming entity, and those who own or control the voting rights of at least five percent of a publicly-held gaming company, are included in Group I applicants.⁶⁴

Group II includes manufacturers of gaming equipment and "key" casino employees.⁶⁵ Group II applicants are employees who are disclosed on the corporate organization table and who have substantial management responsibilities.⁶⁶ This group includes the casino manager, financial operations controller, vice-president of casino operations, operations controller, director of security or

⁵⁹ See 230 ILL. COMP. STAT. 10/5(a)(1) (1993); *id.* § 10/7(e).

⁶⁰ Compare MISS. CODE ANN. § 75-76-67 (1999), with NEV. REV. STAT. 463.0129.

⁶¹ MISS. CODE ANN. § 75-76-7. Nevada uses a two-tier system that consists of the Nevada Gaming Commission, NEV. REV. STAT. 463.022, and State Gaming Control Board, NEV. REV. STAT. 463.030. See also Nevada Gaming Commission and State Gaming Control Board, *Nevada Gaming Regulation*, at http://www.gaming.state.nv.us/about_regulation.htm (last visited Mar. 26, 2002).

⁶² CABOT, *supra* note 4, at 248.

⁶³ *Id.* Gaming devices and equipment differ between jurisdictions, but typically include slot machines, tokens, cards, dice, and other games' essential parts (such as roulette wheels and the big six wheel). *Id.* at 363-94 (discussing various gaming devices).

⁶⁴ *Id.* at 248, 272-77.

⁶⁵ *Id.* at 248.

⁶⁶ *Id.* at 248, 283-98.

surveillance, cage manager, slot and table games manager, credit and collections manager, and pit bosses.⁶⁷

Applications for Group I and II licenses require the most comprehensive and detailed investigation into an applicant's financial and criminal background, personal and family associations, and overall reputation.⁶⁸ This licensing investigation requires the applicant to file an application containing very detailed information.⁶⁹

Group III includes non-gaming or associated equipment manufacturers and suppliers, other casino employees,⁷⁰ lessors, junket representatives, gaming schools, unions, and some lenders.⁷¹ Group III license applicants must also undergo a high level of scrutiny and submit an application with detailed personal information.⁷² Nevertheless, the Group III application is not as encompassing as the application for Groups I and II.⁷³

Group IV includes providers of non-casino goods and services and non-gaming employees.⁷⁴ The Group IV application is significantly shorter in length and focuses on the applicant's criminal background.⁷⁵ In some jurisdictions, a Group IV applicant is not required to file any application. However, in these jurisdictions, the gaming authority retains the right to require a license application at any time.⁷⁶

Finally, Group V includes all other individuals who do not fit in the aforementioned groups, including gaming patrons or other persons or entities. Group V typically includes anyone that the gaming authority wishes to exclude from the gaming facilities in its jurisdiction, or desires to know more information about be-

⁶⁷ *Id.*

⁶⁸ *Id.* at 248, 298-319 (discussing different criteria considered by gaming regulators in assessing gaming license applications).

⁶⁹ For an example of an owner and key person application, see New Jersey Casino Control Commission, Applying for a Casino Employee License or Casino Service Employee Registration, at <http://www.state.nj.us/casinos/applications.htm> (last visited Feb. 24, 2002).

⁷⁰ "Casino Personnel" generally includes cashiers, dealers, floor persons, internal auditors, pit clerks, security guards, slot attendants and mechanics, marketing personnel, and surveillance operators. See CABOT, *supra* note 4, at 248, 283-98.

⁷¹ *Id.* at 248.

⁷² *Id.*

⁷³ For example, in New Jersey, the key employee application, "Personal History Disclosure Form 1-B," requires the applicant to provide detailed financial information, including cash on hand, investments, real estate holdings, assets, and insurance policy information. New Jersey Casino Control Commission, Casino Key Employee License Application, available at <http://www.state.nj.us/casinos/phd1b.pdf>. On the other hand, the New Jersey group three application, "Personal History Disclosure Form 2-A," is much shorter and does not request as much detailed information. New Jersey Casino Control Commission, Casino Employee License Application, available at <http://www.state.nj.us/casino/phd2a.pdf>.

⁷⁴ CABOT, *supra* note 4, at 248.

⁷⁵ See, e.g., New Jersey Casino Control Commission, Casino Service Employee Registration Application, available at <http://www.state.nj.us/casino/phd4a.pdf>.

⁷⁶ See ILL. ADMIN. CODE tit. 86, § 3000.220(b) (2002).

cause of a relationship with the casino, its key persons, or other employees or suppliers.⁷⁷ There is no registration or licensing for this group. Instead, members of this group are simply banned from the casino or prohibited from doing business with a casino.⁷⁸

License applications in all groups must provide the information necessary to complete the investigation and determine whether the applicant is “eligible” and “suitable” to participate in gaming.⁷⁹ An applicant is deemed ineligible if he has been previously convicted of a felony or a misdemeanor involving theft or gambling, or any state or federal crime involving moral turpitude.⁸⁰ Additionally, any applicant who provides false information to the gaming authority is deemed “ineligible.”⁸¹

Gaming authorities should have broad powers to assess the background and integrity of applicants. For example, the Illinois Gaming Board was able to deny a dealer’s license application based on his prior New Jersey conviction for a “disorderly person offense” involving shoplifting.⁸² Although such offenses were not considered crimes in the convicting jurisdiction, the offense would have been considered a crime in Illinois, and therefore, prevented the approval of the applicant’s license.⁸³ Legislation additionally should provide regulators the authorization to conduct in-depth background investigations and mandate that applicants give “full cooperation,” or risk denial.⁸⁴ Likewise, legislation should place the burden of proving suitability for licensing upon the applicant.⁸⁵

Lawmakers should also make it clear that licenses are a revocable privilege, rather than a right. This standard enables the gaming authority to hold the licensee to the highest standard during the license period. If the license term is limited, then the license is a revocable privilege that may be renewed only if the licensee meets the burden of proving continued suitability. In other words, the gaming authority can refuse to grant or renew a license, and neither has to afford the denied applicant an automatic opportunity to be heard, nor provide for judicial review. In-

⁷⁷ See CABOT, *supra* note 4, at 248.

⁷⁸ *Id.* Jurisdictions with self-exclusion programs require compulsive gamblers to register with the gaming authority. See, e.g., 25 Ill. Reg. 7794 (proposed June 29, 2001); 2001 MO. GAMING COMM’N, ANNUAL REPORT TO THE GENERAL ASSEMBLY FISCAL YEAR 2001, at 31-34, available at <http://www.mgc.state.mo.us/annual%20reports/2001/annual2001.pdf>.

⁷⁹ See NGISC FINAL REPORT, *supra* note 1, at 3-21.

⁸⁰ See, e.g., 230 ILL. COMP. STAT. 10/7(a) (2001).

⁸¹ *Id.*

⁸² *Mastro v. Ill. Dept. of Revenue*, 667 N.E.2d 594, 595, 597-98 (Ill. Ct. App. 1996). The New Jersey shoplifting conviction was a crime involving dishonesty, which disqualified plaintiff applicant for an occupational license in Illinois, even though the New Jersey law did not consider the shoplifting conviction a crime. *Id.*

⁸³ *Id.* at 597-98.

⁸⁴ See NGISC FINAL REPORT, *supra* note 1, at 3-21.

⁸⁵ *Id.*

stead, a denied applicant must request a hearing within the time specified by regulation, or risk that the denial will become final.⁸⁶

2. Operational Controls

Another of the main objectives of gaming regulation is to monitor the casino's day-to-day operations. To effectively monitor casinos, gaming authorities require that each casino implement and strictly follow a comprehensive system of controls. Often, the jurisdictional gaming authority will prescribe a set of minimum controls, commonly referred to as the Minimum Internal Control System Standards (MICS).⁸⁷ The MICS typically focus on gaming activity, including the conduct of games, the handling and movement of cash, chips, tokens or other similar items of value, and the accounting and document trail for all transactions.⁸⁸ In general, the MICS related to the conduct of games dictate a universal method of dealing, shuffling, collecting wagers, and paying winning bets.⁸⁹ Casino operators must meet or exceed the MICS; any deviation from the MICS is a red flag to surveillance that wrongdoing, such as collusion or cheating, may have occurred.

With regard to the movement of cash and cash equivalents, the MICS usually require the involvement of several types of employees, such as security personnel, cage cashiers, and slot or table games personnel. The MICS also generally require constant rotation so that employees have neither a set schedule nor systematic or regular pairings. The constant shuffling of personnel and interaction with other disciplines act as a deterrent to internal theft.

The MICS related to accounting and recording of transactions is similar in concept to the MICS for the handling of cash. The accounting MICS incorporate multiple forms that require the signature of several different types of employees. For example, if a table game needs to refill its chip inventory, the dealer, the table game supervisor or pit boss, the cage cashier, and the security guard must all sign a "fill slip" to verify that the order is equal to the actual amount of chips. In addition to these multiple forms, many accounting MICS require the casino operator to review all records and to document each transaction in a log subject to regulatory review or independent audit. Consistent review and detailed log entries should indicate any irregularities that must be reported to the jurisdictional gaming authority.

⁸⁶ See, e.g., ILL. ADMIN. CODE tit. 86, § 3000.405(b)(3) (2002).

⁸⁷ *Id.* § 3000.300-.320.

⁸⁸ See NGISC FINAL REPORT, *supra* note 1, at 3-6.

⁸⁹ See, e.g., ILL. ADMIN. CODE tit. 86, § 3000.320.

3. Enforcement of Laws and Regulations

Yet another essential element to the effective regulation of commercial gaming is the government's ability to enforce its laws and regulations. Enforcement can either take the form of detection and discipline or prevention.⁹⁰ Detection and discipline involve discovering violations of law, regulation, or internal controls, and imposing fines or restrictions on the offending licensee.⁹¹ On-site agents or instruments of the gaming authority enhance the ability to detect violations.⁹² One of the most effective tools used in detection is video surveillance.⁹³ A typical surveillance system incorporates sophisticated video cameras, strategically placed throughout the facility, and controlled from a remote location. The surveillance operator is highly trained in detecting deviations from the MICS, as well as in the techniques typically used in cheating. Surveillance systems allow operators to view a specific area of the facility on command, as well as to zoom in and capture detailed images. In most regulatory schemes, the on-site agents have independent surveillance command centers, separate from the operator centers.⁹⁴

Unlike detection, prevention seeks to reduce regulatory violations through education, training, and deterrence.⁹⁵ For instance, programs designed to identify underage and problem gamblers, as well as intoxicated patrons, are valuable to avoid a potentially dangerous situation or regulatory violation. These programs also serve to put the operator on notice of the importance of compliance and the consequences of non-compliance.⁹⁶ However, prevention is dependent on successful detection and discipline. If regulatory violations are regularly detected and consistently disciplined, then operators and employees are deterred from both intentional and negligible regulatory violations.⁹⁷

4. Taxes

Tax revenue is perhaps the primary economic benefit that a jurisdiction derives from the authorization of gaming. Gaming taxes typically focus on the patron and the casino. Taxes on pa-

⁹⁰ CABOT, *supra* note 4, at 501.

⁹¹ *Id.*

⁹² See NGISC FINAL REPORT, *supra* note 1, at 3-21.

⁹³ *Id.*

⁹⁴ See, e.g., ILL. ADMIN. CODE tit. 86, § 3000.850.

⁹⁵ CABOT, *supra* note 4, at 501.

⁹⁶ The consequences of non-compliance include issuance of a disciplinary complaint, which could result in a fine or a notation to the licensee's file. The file notation will be reviewed when the licensee makes a renewal request, and could lead to restrictions on the licensee and its activities, mandated reporting requirements, or other additional expenses to ensure compliance.

⁹⁷ CABOT, *supra* note 4, at 501-02.

trons include admission, sales, and income taxes. Casino taxes include state and local taxes on gross, adjusted gross, or net revenues;⁹⁸ the quantity of games or gaming devices; the size of the casino floor; or the license privilege.⁹⁹ When determining how much tax should be assessed, jurisdictions must consider competing markets and other leisure activities. If gaming taxes are too high, then casinos may pass the expense on to the customer in the form of higher costs, making the gaming product less attractive in comparison to other activities and gaming markets.

Regardless of the tax structure, tax assessment affects casino output. Casino output is properly determined by the number of games, the size of the facility, the amount of investment, the number of employees, and the payout percentage.¹⁰⁰ Government can control output through legislation, such as a minimum capital investment requirement, restrictions on casino size or number of games, and minimum payout percentage requirements. However, patrons can also control output; once minimums are set, market competition will drive payout percentages, types of games offered, and capital investments required.

Illinois utilizes the highest gaming tax structure in the United States.¹⁰¹ In addition, Illinois restricts the number of "gaming positions" to 1200,¹⁰² and requires a minimum payout percentage for slot machines.¹⁰³ In comparison, Indiana has a twenty percent tax on gaming revenues and no limit on the number of gaming positions.¹⁰⁴ Likely, the most significant difference between Illinois and Indiana is that Indiana requires its casinos to "cruise" on the water in order to conduct gaming, whereas Illinois does not.¹⁰⁵

Illinois and Indiana casinos are vying for the same patrons in some regions, competing not only with fellow licensees, but also with casinos across the state border.¹⁰⁶ As a result, actual payout

⁹⁸ Adjusted gross revenue is the amount wagered by patrons less winnings paid by casinos.

⁹⁹ CABOT, *supra* note 4, at 439.

¹⁰⁰ *Id.* at 443.

¹⁰¹ AGA SURVEY, *supra* note 8, at 7-18.

¹⁰² See ILL. ADMIN. CODE tit. 86, § 3000.606 (2002), which provides that 1200 gaming positions are counted as ninety percent of all electronic gaming devices (slot machines), ten positions for craps tables, and five positions for all other table games.

¹⁰³ *Id.* § 3000.660.

¹⁰⁴ See IND. CODE § 4-33-13-1(a) (2002) (imposing a twenty percent tax on adjusted gross receipts).

¹⁰⁵ *Id.* § 4-33-9-2(a). Gaming may occur while docked if "the master of the riverboat reasonably determines and certifies in writing that . . ." certain conditions would "present a danger" to the safety of the passengers, the vessel is undergoing mechanical or structural repair, or the master was notified that a condition exists that would cause a violation of federal law. *Id.* § 4-33-9-2(b).

¹⁰⁶ Illinois licensees, Grand Victoria (Elgin), Empress (Joliet), Harrah's (Joliet), and Hollywood Casino (Aurora) compete with Indiana licensees, Blue Chip Casino (Michigan City), Harrah's (East Chicago), The Majestic Casino (Gary), and Trump Casino (Gary). See

percentages in both states far exceed the minimum required by law;¹⁰⁷ however, Indiana casinos can offer more games than Illinois casinos, but must cruise in order to do so. Therefore, patrons having equal travel times to both locations must choose between the ability to enter and leave at will versus an almost guaranteed gaming position with a slightly worse payout percentage.

The tax on gaming revenues is typically neither the only tax imposed on casinos, nor the only cost that impacts the bottom line. Jurisdictions must be cognizant of additional obligations imposed on casinos. High taxes, minimum investment, competition, and local economic obligations all have a substantial effect on the casinos' final gaming "product."

For example, consider the result in the U.S. Virgin Islands (Virgin Islands). The Virgin Islands legislature passed gaming legislation that was substantially similar to the New Jersey Casino Control Act,¹⁰⁸ presumably because the Virgin Islands are located in the same federal judicial circuit as New Jersey, and the legislature wanted to rely upon an existing body of common law. Despite its intentions, the Virgin Islands failed to account for the market differences between the islands and New Jersey; while New Jersey attracts patrons within a two hundred mile driving radius,¹⁰⁹ St. Croix is a destination resort dependent on air travel and cruise ship tourists. Regardless of these stark differences, the Virgin Islands law imposed restrictions and minimums similar to those in New Jersey.¹¹⁰ As a result, little, if any, interest in gaming development has occurred in St. Croix.¹¹¹

ILL. 2000 REP., *supra* note 26; IND. GAMING COMM'N, 2000 ANNUAL REPORT TO THE GOVERNOR (Feb. 28, 2001), *available at* http://www.state.in.us/gaming/pdf/00_report.PDF.

107 ILL. GAMING BD., JANUARY 2002 MONTHLY RIVERBOAT CASINO REPORT 5 (2002), *available at* <http://www.igb.state.il.us/revreports/>. Illinois uses the term Electronic Gaming Device for what is commonly referred to as a slot machine. Additionally, the term Adjusted Gross Receipts (AGR) refers to the amounts wagered less the patrons' winnings. The AGR is reported as either the percentage of bets retained by the casino or the percentage of returns paid out to the patron. In December 2001, the AGR for the Electronic Gaming Devices in Illinois were: Elgin – 5.75% retained or 94.25% returned; Joliet Harrah's – 7.35% retained or 92.65% returned; Empress – 6.7% retained or 93.3% returned; and Aurora – 6.36% retained or 93.64% returned. *Id.* The total average was 6.27% retained or 93.73% returned. *Id.* The December 2001 AGR for Electronic Gaming Devices in Indiana was significantly more favorable to casinos than in Illinois. The averages for casinos in Indiana were: Michigan City 6.47% or 93.53% return, East Chicago 8.21% or 91.79% return, Hammond 7.24% or 92.76% return, and Gary Majestic Star 7.15% or 92.85% return for a total average of 7.3% retained by the casinos or 92.7% returned to patrons. Therefore, Indiana casinos held 0.76% over the amount held by Illinois casinos. *See* IND. GAMING COMM'N, DECEMBER 2001 MONTHLY REPORT 5-8 (2001).

108 Virgin Islands Casino and Resort Control Act of 1995, 32 V.I. CODE ANN. §§ 401-99 (2001).

109 JASON N. ADER ET AL., BEAR STEARNS GLOBAL GAMING ALMANAC (1999).

110 INT'L CASINO LAW, *supra* note 44, at 264.

111 Since passage of the gaming act in 1995, only one casino has opened. *See* Vacation-St. Croix, Casino Gambling, *at* <http://www.vacation-stcroix.com/departments.cfm?ID=42> (last visited Mar. 29, 2002).

5. Accounting and Audit

Accounting and audit procedures, whether pursuant to law or regulation, are necessary to control and protect the revenues generated from gaming activities.¹¹² Accounting procedures provide a detailed picture of cash flow and can assist in detecting internal theft, commonly referred to as “skimming.” Furthermore, accounting procedures can determine whether unlicensed, and possibly unsuitable, persons are profiting from gaming activities.¹¹³ The audit function of accounting is a companion tool that can identify non-compliance with internal controls.¹¹⁴

The casino industry presents unique accounting and audit difficulties; unlike other industries, the government has a vested interest in gaming revenue maximization and accurate gaming revenue accounting.¹¹⁵ For example, Illinois casinos are taxed on adjusted gross receipts.¹¹⁶ However, the Illinois Gaming Board allows the casinos to deduct costs associated with the direct promotion of a gaming activity from the adjusted gross receipts total. A typical direct promotion is an “enhanced payout” on an approved game, such as a slot machine.¹¹⁷ Understandably, casinos prefer enhanced payouts or other direct promotions over other forms of marketing because the state shares the expenses, resulting in a lower tax obligation. Therefore, a detailed set of internal controls and accounting procedures to identify such an adjustment during an audit is necessary to assure regulators of strict compliance.

Tracking wagers poses another accounting challenge, unique to the gaming industry. In contrast to most other industries, the gaming industry does not create a record of all transactions. It is impossible, and would be impractical, to try and record each bet made by every player at all tables. However, each gaming table has a sizable “bank,”¹¹⁸ and unlike adjusting gross receipts, both the casino and the state have a vested interest in table transactions. Only detailed internal controls related to the issuing of credit, re-filling the table chip inventory, dealing of the gaming,

¹¹² CABOT, *supra* note 4, at 395.

¹¹³ *Id.*

¹¹⁴ *Id.* (noting that audits are integral to the regulation of gaming because the industry is primarily a cash business).

¹¹⁵ See CABOT, *supra* note 4, at 396-97.

¹¹⁶ See 230 ILCS 10/13(a) (1999); *id.* § 10/4(h) (defining adjusted gross receipts).

¹¹⁷ Illinois defines “enhanced payout” as follows:

An event sponsored by a Riverboat Gaming Operation wherein Gaming patrons participate in a Game or an approved variation of a Game and thereby qualify for receiving, upon a specified outcome in such Game, a payment or thing of value in excess of payouts contained in the Internal Control System or as displayed on the Gaming Device. The cost of such excess payment or thing of value may be subtracted from Gross Receipts in determining Adjusted Gross Receipts.

ILL. ADMIN. CODE tit. 86, § 3000.614(a)(1) (1999).

¹¹⁸ The term “bank” relates to the inventory of cash or cash equivalents (chips) at each table used to pay winnings to patrons.

paying and collecting wagers, and the dealer's approach and departure from the table, together with accounting procedures related to the dealer's activities and ability to audit the game's "performance,"¹¹⁹ can assure the safeguarding of revenues.

Accounting requirements should focus on the issue of access, which generally includes access to the facility, sensitive areas, the games, the cash and cash equivalents, and information.¹²⁰ Access controls limit the scope of an audit, narrows the accounting function, and shrinks the number of individuals who are accountable for a particular aspect of the gaming operation. For example, consider slot machines; those who collect the money do not have access to any other part of the game. Similarly, those who maintain the game do not have access to the control areas—the revenue collection areas within the game, the storage areas for dice and cards, the cashier area, and player information. Access limits assist in accounting for the entire gaming operation and allow independent or government auditors to perform a narrow, focused review as opposed to reviewing all records when looking for a specific area of concern.

The elements discussed above are both integral and essential to the effective regulation of commercial gaming. Without them, maintenance of the integrity of the gaming environment is almost impossible. Other elements are not discussed, but nonetheless, are effective tools in gaming industry regulation. Issues related to the disclosure of records, advertising, hours of operation, promotions and give-a-ways, and the hearing or review process are important issues that should be part of any well-regulated system. While appropriate if addressed by legislation, these additional elements are adequately covered by regulation or agency policy. Furthermore, because these elements do not pertain to sensitive issues, it is appropriate to address them as they arise.

C. Other Sensitive Issues

Other sensitive issues of gaming regulation relate to social concerns. While sensitive issues are not integral to the regulatory process, they should be considered and addressed as essential elements of gaming regulation, rather than as other elements that are commonly addressed when they arise. Compulsive and under-

¹¹⁹ All casino games are rooted in mathematical probabilities, meaning the casino knows the theoretical performance of a particular game based on the rules and elements of that game. For example, odds related to the game of craps is based on the number of combinations for a particular number. The mathematical probability of the number twelve is based on its single possible combination using two dice—two sixes. Similarly, other games have a mathematically derived theoretical hold percentage or casino advantage. If an audit on a particular game deviates from that mathematically known theoretical hold, then the casino can monitor the individuals associated with that game.

¹²⁰ CABOT, *supra* note 4, at 399.

age gambling, alcohol consumption, and the scope of authorized gaming are the most common sensitive issues that confront lawmakers and regulators. Typically, these issues are addressed in the gaming legislation where, with varying degree, lawmakers provide a framework for regulators to follow. Nevertheless, legislative directives must take into account opposition and criticism from anti-gaming interests that regulators will likely face when promulgating rules or setting policy. Opponents of gaming will likely complain that not enough is being done to prevent compulsive and underage gambling. Additionally, gaming opponents will likely allege that regulatory agencies exceed their authority and fail to follow the will of the people when addressing issues related to the scope of gaming.

1. Compulsive Gambling

Compulsive or pathological gamblers account for a small percentage of all adults who participate in legal gaming activities.¹²¹ Typically, casinos do not consider compulsive gamblers to be good customers; although they will likely risk losing everything in order to gamble, casinos actually prefer repeat customers that gamble with discretionary income in exchange for receipt of entertainment value. Regardless of the gaming industry's position and sincere concern for compulsive gamblers, those impacted by compulsive gamblers' habits, such as a spouse or other family members, frequently target the casinos to vent their frustrations. Given the emotional aspect of compulsive gambling, regulatory involvement is crucial to establish and maintain neutrality.

Missouri has been the leader in regulatory programs that address problem gambling.¹²² The Commission takes a proactive approach to the problem; it offers free compulsive gambling counseling to both problem gamblers and their family members.¹²³ The Commission also created a voluntary exclusion program, whereby problem gamblers can isolate themselves from the temptations of gaming.¹²⁴

¹²¹ The American Psychiatric Association "classifies pathological gambling as an impulse control disorder and describes 10 criteria to guide diagnoses, ranging from 'repeated unsuccessful efforts to control, cut back, or stop gambling' to committing 'illegal acts such as forgery, fraud, theft or embezzlement to finance gambling.'" NGISC FINAL REPORT, *supra* note 1, at 4-1 (citing the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders).

¹²² The Missouri Gaming Commission, through its website, provides a wealth of information on this topic. See Missouri Gaming Commission, Problem Gambling, at <http://www.mgc.state.mo.us/problem.html> (last visited Feb. 24, 2002).

¹²³ Missouri Gaming Commission, *Problem Gambling*, at http://www.mgc.state.mo.us/pg_intro.htm (last visited Feb. 24, 2002).

¹²⁴ Compare Missouri Gaming Commission, *Voluntary Exclusion Program*, at <http://www.mgc.state.mo.us/vep.htm> (last visited Mar. 29, 2002) (directing Missouri casino operators to "remove Disassociated Persons from all direct marketing lists; refuse check cashing

Illinois specifically addresses compulsive gambling in its Riverboat Gambling Act,¹²⁵ and the Illinois Gaming Board has proposed a voluntary exclusion rule.¹²⁶ However, the proposed rule has raised numerous concerns by Illinois casinos regarding potential liability.¹²⁷ Although the proposed rule provides for a waiver of liability in favor of the Board and the State for any damages related or incidental to the program, the rule provides no similar provision for the casinos.¹²⁸ Aside from self exclusion programs, tax revenues can be earmarked for compulsive gambling programs, and casinos can be required to post information about compulsive gambling—both effective tools that also should be considered by lawmakers and regulators.

2. Underage Gambling

Underage gambling is another very sensitive issue for casinos. Every gaming jurisdiction in the United States prohibits those under a certain age from entering casinos or participating in gaming activities.¹²⁹ Regulators must enforce the age requirement set by statute and, at the same time, confront pressure from the public, which actively monitors the issue. Therefore, regulators are best served by holding casinos to a strict liability standard. Under this approach, if an underage person gains access, the casino is disciplined—a powerful deterrent. While a typical disciplinary action involves a generally insignificant fine, the casino must report the regulatory action to every jurisdiction where it is licensed, and the action will be considered when the casino requests a renewal of its license.¹³⁰ Additionally, the far-reaching conse-

privileges; and deny participation in player programs”), with ILL. ADMIN. CODE tit. 86, § 3000.750-793 (proposed May 30, 2001), available at <http://www.igb.state.il.us/whatsnew/750thru793june01.pdf> (proposing a voluntary self exclusion program).

¹²⁵ 230 ILL. COMP. STAT. 10/13.1 (2002).

¹²⁶ 25 Ill. Reg. 7794 (proposed June 29, 2001).

¹²⁷ Frank J. Fahrenkopf, Jr., Statement Before the Illinois Gaming Board (May 3, 2000), at http://americangaming.org/media_update/speeches/speech.cfm/id/21 (last visited Mar. 25, 2002); see also *State Weighs Problem Gambling*, GAMBLING MAGAZINE, at <http://gamblingmagazine.com/articles/40/40-467.htm> (last visited Mar. 29, 2002).

¹²⁸ See 25 Ill. Reg. 7794.

¹²⁹ I. Nelson Rose, *Gambling and the Law®: Minimum Legal Age to Place a Bet*, at <http://www.gamblingandthelaw.com/agechart.html> (last visited Mar. 13, 2002) (providing the minimum age required to wager at various gaming activities including lottery, pari-mutuel, and casino in each state).

¹³⁰ See ILL. ADMIN. CODE tit. 86, § 3000.237(b) (2002). For example, in Illinois:

Upon issuing a renewed Owner's license, the Board may restrict the term of the renewal to any period of less than 4 years, and may impose additional restrictions and conditions on the renewed license. In deciding whether to issue a restricted license, the Board shall consider: 1) The standards applied under Section 3000.236(b) in renewing a license; 2) The business practices and regulatory history in Illinois and other jurisdictions of the licensee, its Key Persons and affiliates; 3) The licensee's reputation and associations; and 4) Any other information considered by the Board to be relevant to renewal of the license.

Id.

quences and public demand for compliance has led to the development of focused training programs.¹³¹ For example, some jurisdictions impose criminal sanctions on the casino if an underage gambler is caught in the casino.¹³²

3. Alcohol Consumption

Alcohol is a sensitive issue for casinos because of local regulation, hours of consumption, and complimentary drinks for casino patrons. Like compulsive gambling, alcohol consumption invokes strong emotions. Furthermore, gaming opponents morally opposed to casinos often are also opposed to alcohol consumption. Conversely, casinos typically consider alcohol a necessary component to the overall entertainment value of their product, giving away drinks to gamblers, regardless of the time of day. Additionally, local bar owners often see casinos as a threat to their businesses. Given these competing interests, the regulatory agency is best suited to harmonize all positions. Lawmakers should consider incorporating a section that grants jurisdiction to the gaming authority for all aspects related to alcohol within the casino.¹³³

4. Scope of Gaming

The scope of gaming relates to the physical attributes of the casino, such as the location, size, number and types of games, and type of facility. Through legislation and regulation, a jurisdiction can control or limit the possible negative appearance of gaming.

a. Location

Location can be restricted to those areas in most need of economic development, but lawmakers must take caution in drafting so as not to violate principles of special legislation.¹³⁴ For example, in Illinois, lawmakers directed the Gaming Board to issue licenses in locations on certain rivers in the city of East St. Louis, but refused to issue licenses in areas with populations in excess of

¹³¹ For a detailed discussion regarding underage training programs, see Harrah's "Project 21" Program, Harrah's, Responsible Gaming, at http://www.harrah.com/about_us/code_5_legalage.html (last visited Feb. 24, 2002).

¹³² N.J. STAT. ANN. § 5:12-119 (West 1996) (imposing penalties on casino employees for allowing an underage person in the casino unless entry was gained through fraud or other mitigating evidence).

¹³³ See, e.g., 230 ILL. COMP. STAT. 10/5(c)(18) (2001).

¹³⁴ *Black's Law Dictionary* defines "special law" as "[o]ne relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class, rather than upon the public generally." BLACK'S LAW DICTIONARY 1397-98 (6th ed. 1990). The Missouri Supreme Court found that the language in the referendum exempting the Admiral casino and the leased sites along the St. Louis riverfront from cruising to be a "facially special law," which is presumed to be unconstitutional. *Harris v. Mo. Gaming Comm'n*, 869 S.W.2d 58, 65 (Mo. 1994).

three million.¹³⁵ Legislation can also limit where, within a certain area, the facility may be located. For example, requiring that the facility be on a navigable waterway, or not within a certain radius of a school or church, are both effective means of restricting location.

b. Limits on Size

Limits on size may apply to the facility itself, the number of facilities, the size of the gaming space, or the number of games. Lawmakers have the option to draft detailed requirements or direct the regulatory agency to enforce a broad policy by adopting regulations. In addition, limits on size may be contingent upon other development requirements. For example, Illinois limits owners to two riverboats per license.¹³⁶ Owners are permitted to operate both riverboats at the same time, but are required to comply with the restriction on the number of gaming participants.¹³⁷ However, the Illinois Riverboat Gambling Act does not define a gaming position. Instead, the Gaming Board promulgated a rule on how to calculate 1200 gaming participants.¹³⁸ Conversely, in New Jersey, casino size is contingent on the number of hotel rooms—the more hotel rooms in a casino, the larger the casino can be.¹³⁹

c. Type of Facility

The type of facility relates to the appearance of the development and the amenities offered. Regulation in this area requires regulators to balance local preferences¹⁴⁰ with the casino developer's preferences.¹⁴¹ For example, Louisiana's authorization of a single, land-based casino in New Orleans¹⁴² prohibited the addi-

¹³⁵ Illinois statutes, as originally enacted, only excluded Cook County because Chicago (a city within Cook County) has a population in excess of three million; however, the 1999 amendment removed the population restriction. *Compare* 1999 Ill. Legis. Serv. 91-40 (West), *with* 230 ILL. COMP. STAT. 10/3(c) (2001).

¹³⁶ 230 ILL. COMP. STAT. 10/7(h).

¹³⁷ *Id.*

¹³⁸ ILL. ADMIN. CODE tit. 86, § 3000.606 (2002). The Illinois Administrative Code provides:

The number of Gaming participants will be determined by the number of Gaming positions available and such positions will be counted as follows: a) Positions for Games utilizing Electronic Gaming Devices will be determined as 90 percent of the total number of devices available for play; b) Craps tables will be counted as having ten Gaming positions; c) Games utilizing Live Gaming Devices, except as provided in subsection (b) will be counted as having five Gaming positions.

Id.

¹³⁹ N.J. STAT. ANN. § 5:12-83 (West 2002).

¹⁴⁰ This typically includes the community's customs, heritage, morals, and tourism experience.

¹⁴¹ This typically may include theme or brand recognition, prior design success, and competing non-gaming amenities.

¹⁴² LA. REV. STAT. ANN. § 27:241 (West 2002).

tion of non-gaming amenities, such as hotel rooms and restaurants. In Illinois, the original riverboat statute restricted the facility's appearance to either a nineteenth century replica of an Illinois riverboat or a cruise ship.¹⁴³

Legislation that focuses on essential elements will maintain the integrity of the gaming environment, while legislation that addresses the sensitive issues will alleviate concerns based largely on emotions and beliefs. The areas discussed herein should be incorporated with other areas of specific concern to lawmakers and their constituents. However, lawmakers need to be careful when drafting gaming laws so as not to exceed their authority, include special legislation, or violate the state's constitution.

Regardless of the economic or competitive need for gaming, anti-gaming interests will always be present to challenge the law.¹⁴⁴ Often there is a limited timeframe in which to pass a gaming statute; however, if the law is deficient, correction will be a long and arduous task. Similarly, if the law fails to address a key concern and requires amendment, it will likely be difficult to get the necessary support for passage without concessions to special interests groups. Unfortunately, it is probable that such special interest groups may not fit within the intent or policy considerations of the original law.¹⁴⁵

IV. DELEGATION AND THE ROLE OF THE REGULATOR

In the gaming context, the legislature's primary responsibility is to draft and adopt a gaming law that contains a clear public policy and well-defined goals. However, the legislature is not equipped to implement or enforce its law. Instead, lawmakers

¹⁴³ 230 ILL. COMP. STAT. 10/6(f) (2001) originally read,

The licensed owner shall . . . certify that the riverboat: (1) has the authorized capacity required in this Act; (2) is accessible to disabled persons; (3) *is either a replica of a 19th century Illinois riverboat or of a casino cruise ship design*; and (4) is fully registered and licensed in accordance with any applicable laws." (emphasis added indicating language removed from amended statute).

Compare 1999 Ill. Legis. Serv. 91-40 (West), with 230 ILL. COMP. STAT. 10/6(f). Some commentators have noted that "[t]he original rationale for confining gambling to the water was that it would limit the impact on local communities while gambling would still be accessible. In addition, if casinos did not succeed, they could pull anchor and sail away without leaving empty buildings behind." Rychlak, *supra* note 42, at 309 (citation omitted).

¹⁴⁴ See generally *Akin v. Mo. Gaming Comm'n*, 956 S.W.2d 261 (Mo. 1997) (challenging games of chance); *Harris v. Mo. Gaming Comm'n*, 869 S.W.2d 58 (Mo. 1994) (challenging a state statute authorizing riverboat gambling).

¹⁴⁵ 230 ILL. COMP. STAT. 10/11.2. Illinois law allows for the relocation of a license into an area that was originally excluded in exchange for, in the author's opinion, dockside gaming. See *Lake County Riverboat L.P. v. Ill. Gaming Bd.* 730 N.E.2d 524, 533 (Ill. Ct. App. 2000) (holding the plaintiff did not have standing to challenge the 1999 amendments to the Illinois Riverboat Gambling Act, and that only owner licensees could bring suit). In the author's opinion, given that the 1999 amendments included an inseverability clause, and that the remaining licensees saw their revenues increase over forty percent with dockside gaming, it is unlikely that a challenge will ever occur.

delegate that job to a regulatory agency, which allows the legislature to direct the regulator to carry out the policy goals established in the gaming law.¹⁴⁶ Gaming legislation that broadly directs the regulatory body to promulgate regulations necessary to effectuate the intent of the law allows for changes in business conditions, public perception, and competitive factors.¹⁴⁷ Vesting discretion in the regulatory body is attractive to casino developers for a number of reasons. First, the regulators are faced with the difficult issues on a daily basis and better understand the concepts presented by the gaming industry. Second, rule promulgation is an easier and faster process than statutory amendment. Finally, if appropriate, a regulatory policy may be issued at will, without waiting for legislative approval.¹⁴⁸

By comparison, gaming legislation that is overly specific often restricts and interferes with the regulatory function, and is unattractive to investors. With overly specific legislation, little discretion is afforded to the regulatory body. The regulator is limited to the role of enforcer, and is unable to assist in the maturation of the gaming industry. In addition, the regulatory body risks being viewed as an industry partner or sympathizer when it lobbies for statutory change. Thus, regulators may opt not to request statutory changes to avoid scrutiny or questions regarding their integrity. As a result, there is little interest in operating in such a regulatory environment, and the purpose of gaming, deriving economic benefits, is never realized.

For example, when the Virgin Islands authorized casinos on St. Croix, the legislature nearly copied the entire New Jersey Casino Control Act.¹⁴⁹ The legislature reasoned that because New Jersey was in the same federal judicial circuit, adopting a developed body of law would simplify gaming regulation.¹⁵⁰ However, lawmakers failed to take into account the market differences between the two locations. Whereas New Jersey had a market of 29.9 million adults within a two hundred-mile driving radius, St. Croix is dependent on air and cruise ship tourism.¹⁵¹

Despite these differences, the Virgin Islands gaming law required a significant initial investment to receive a license.¹⁵² The law also required a minimum number of rooms and non-gaming

¹⁴⁶ CABOT, *supra* note 4, at 12-13.

¹⁴⁷ See, e.g., 230 ILL. COMP. STAT. 10/5.

¹⁴⁸ Illinois law requires administrative agencies to comply with rulemaking procedures, as opposed to issuing policy, which does not require the agency to follow any process. See Ill. Gaming Board, Policy Interpretation & Action Transmittal, 86 Ill. Admin. Code. tit. 86, §§ 3000.100, .240, .320, available at <http://www.igb.state.il.us/regs/index01.01.pdf>, for an example of Board policy.

¹⁴⁹ See discussion *supra* Part III.A.4.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² INT'L CASINO LAW, *supra* note 44, at 263-64.

amenities, as well as limited casino floor space proportional to the number of rooms developed.¹⁵³ Because the development requirements were pursuant to law, the regulators were unable to approve proposals from prospective operators that did not meet the investment standards.¹⁵⁴ Although the regulators met with interested parties that presented information related to the difficulty in recouping their respective investment level set by law, the regulators were without discretion. As a result, the regulators were left with nothing to regulate.

The better regulatory scheme is achieved through delegation and discretion. Lawmakers should direct the regulatory body to implement the law.¹⁵⁵ In turn, regulators fulfill that responsibility by controlling the gaming environment, which typically includes: approving license applications; setting up hearing procedures related to license denial and disciplinary action; controlling the types of games that may be offered; adopting the rules of such games; setting the conditions under which gaming facilities may operate including hours of operation; and deciding who may work at the facility.¹⁵⁶ To effectively control the gaming environment, the legislature should provide regulators direct authority to do "that which is necessary."¹⁵⁷

Additionally, regulators should have the ability to hire state law enforcement officers as personnel assigned to conduct investigations because those officers have wide-ranging access to criminal and background information.¹⁵⁸ Law enforcement officers are also important to demonstrate to the public, as well as to the gaming operators, that the gaming authority is present at the gaming

¹⁵³ 32 V.I. CODE ANN. § 435 (2001).

¹⁵⁴ INT'L CASINO LAW, *supra* note 44, at 263-64.

¹⁵⁵ See, e.g., 230 ILL. COMP. STAT. 10/2-10/3 (2001).

¹⁵⁶ See NGISC FINAL REPORT, *supra* note 1, at 3-2.

¹⁵⁷ For example the Illinois legislature provided the Illinois Gaming Board broad discretion:

There is hereby established within the Department of Revenue an Illinois Gaming Board which *shall have the powers and duties specified in this Act, and all other powers necessary and proper to fully and effectively execute this Act* for the purpose of administering, regulating, and enforcing the system of riverboat gambling established by this Act. Its jurisdiction shall extend under this Act to every person, association, corporation, partnership and trust involved in riverboat gambling operations in the State of Illinois."

¹⁵⁸ 230 ILL. COMP. STAT. 10/5(a)(1) (emphasis added).

The Illinois legislature has provided the Illinois Gaming Board such power:

The Board shall have jurisdiction over and shall supervise all gambling operations governed by this Act. The Board shall have all powers necessary and proper to fully and effectively execute the provisions of this Act, including, but not limited to . . . [t]o hire employees to gather information, conduct investigations and carry out any other tasks contemplated under this Act.

Id. § 10/5(c)(16). In addition, § 10/5(d) states, "The Board may seek and shall receive the cooperation of the Department of State Police in conducting background investigations of applicants and in fulfilling its responsibilities under this Section." *Id.* § 10/5(d).

facility.¹⁵⁹ These regulatory agents monitor the gaming floor, inspect the gaming devices, operate the independent surveillance room, eject patrons who violate the gaming law, assist local law enforcement in arresting those who violate municipal law, assist federal authorities investigating fraud, money laundering or other crimes by known criminals, and accept patron complaints related to the facility.

Vesting an independent regulatory body with the discretion to implement the gaming law assures the preservation of the gaming environment's integrity. Nevertheless, checks and balances should be incorporated into the system in order to avoid the unlikely possibility that a regulatory decision was the result of outside influence. Another important aspect of regulatory discretion relates to rule promulgation. Generally, rules are grouped into sub-parts including definitions, license categories and responsibilities, internal control systems, the conduct of gaming activities, security systems, hearing procedures, and accounting and auditing procedures. They put the industry on notice with regard to how it should run its operations and the standards expected by regulators. Rules also inform the industry about the consequences of non-compliance.

V. CONCLUSION

As previously stated, all jurisdictions that allow gaming adopt some form of regulation. Regardless of the regulatory scheme, the ultimate goal of regulation should be maintaining the integrity of the gaming environment and assuring the public that the games are fair. The successful regulation of commercial gaming combines well-drafted legislation with administrative implementation.

Well-drafted legislation stems from a clear understanding of the reason for authorizing gaming. Lawmakers that take the time to develop a public policy for gaming will be able to incorporate provisions that have meaning and purpose. Issues of specific concern or importance to a community are properly addressed in legislation, along with the key elements addressed herein. The essential elements will preserve the integrity of the gaming environment and allow the regulatory body to implement the law.

¹⁵⁹ Illinois provides the following duties:

The Board shall have general responsibility for the implementation of this Act. Its duties include, without limitation . . . [t]o be present through its inspectors and agents any time gambling operations are conducted on any riverboat for the purpose of certifying the revenue thereof, receiving complaints from the public, and conducting such other investigations into the conduct of the gambling games and the maintenance of the equipment as from time to time the Board may deem necessary and proper

Id. § 10/5(b)(6).

With proper regulation, commercial gaming can provide benefits to a community that no other industry can provide. From infrastructure improvements and the creation of jobs, to increased tourism, gaming has proven to be a business sector that has the ability to stimulate an economy in times of recession; it has also become a dominant entertainment option for American adults. Gaming has evolved into a corporate format that focuses on customer satisfaction, brand name recognition, and social concerns. The transformation from an industry that many thought was controlled by unsavory individuals, to today's ownership and management structure, is largely attributable to advancements in government regulation.